IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.75675 of 2021

(Arising out of Order-in-Appeal No.30/HWH/ST/2021-22 dated 21.06.2021 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

M/s Universal Bituminous Industries Pvt. Ltd.
68, Hemanta Basu Sarani, 1st Floor, Kolkata-700001

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1, Strand Road, Kolkata 1

Respondent

APPERANCE :

Shri Prashant Kapari, Director & Shri Himanshu Jha, A.R. for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…75521/2023

DATE OF HEARING : 30 .05.2023
DATE OF DECISION : 30 .05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding service tax on Manpower Recruitment and Supply Agency Service.

2. The facts of the case are that the appellant is a manufacturer of excisable goods as well as obtained certain tender for execution for work from Government Department. For execution of that work, the appellant asked certain contractors to execute the work on behalf of the appellant and accordingly, bills have been raised.

3. The Revenue is of the view that the appellant has engaged the contractors and supplied man power services to the Government

Department for execution of the work. Therefore, the appellant is liable to pay service tax under Manpower Recruitment and Supply Agency Service. Accordingly, proceedings were initiated against the appellant and demand of Rs.4,96,512/- along with interest was confirmed against the appellant . Against the said order, the appellant is before us.

4. The ld.Authorised Representative appearing on behalf of the appellant, submits that the appellants have not supplied the labours to the Government Department. In fact, they have engaged the contractors to execute the work awarded to them by Government Agency. To that effect, he produced certain invoices and agreement for contract with the sub-contractors. He, therefore, prayed that as the appellant is not engaged any supply of labour, therefore, service tax cannot be demanded from them.

5. The ld.A.R. for the Revenue reiterated the impugned order.

6. Heard the parties and perused the records.

7. On perusal of the records, we find that the appellant succeeded in obtaining certain works order from the Government Department and to execute those work contracts. The appellant engaged certain sub-contractors for execution of the said work and paid the amount on lumpsum basis. For better appreciation, one invoice issued by M/s Kalpana Traders is extracted below :

KALPANA TRADERS

Engineer and Govt. Contractor

Tally

60/2 Mahatma Gandhi Road,
Kolkata- 700082
Mob.- 9830870173
9830311173

Ref. No....................... Date..................

Bill No.: -KT/109/LB/14-15 Date: - 05-Mar-15

Buyer's Name & Address: -	UNIVERSAL BITUMINOUS INDUSTRIES PVT LTD 12 BBD BAG(EAST) KOLKATA-700001

PAN NO-ALHPD5221C

Particulars		Amount(In Rs.)
Labour Charges for paving road surface by mastic asphalt at paharpur Road from Bandha Battala to Hari Mohan Ghosh College in Ward No. 133 Br.X Details as per attached sheet marked as Annexure 'A' Gross Value		400,000.00
Value		400,000.00
Total Amount Payable		

Amount in Words:	Rupees Four Lakhs only

Please Pay By Crossed Cheque Or Demand Draft Only

Kalpana Traders
KALPANA TRADERS
Proprietor
Signatory

Contact No.: 9830870173
Email Id:kalpanatrade@gmail.com

UNIVERSAL BITUMINOUS INDUSTRIES PVT. LTD.

23.

From the above, it is not coming out that the appellant is engaged in the activity of supply of Manpower Recruitment and Supply Agency

Service. Therefore, the appellant is not liable to pay service tax under the category of "Manpower Recruitment and Supply Agency Service". Therefore, the demand raised against the appellant under the category of "Manpower Recruitment and Supply Agency Service" is set aside.

8. In these terms, the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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